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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
 SENTENCE BY A PERSON IN FEDERAL CUSTODY

JULIE RICHARDS JOHNSTON, CLERK  
 US DISTRICT COURT, EDNC  
 BY MAJ DEP CLK

United States District Court		District	Eastern District
Name (under which you were convicted): <u>Tron Layke Davis</u>		Docket or Case No.: <u>4:13-cr-00006-B0</u>	
Place of Confinement: <u>F.C.I. Williamsburg</u>		Prisoner No.: <u>57361-056</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <u>Tron Davis</u>	

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
United States District Court for The Eastern District of North Carolina  
Eastern Division, P.O. Box 25670, Raleigh, NC 27611

(b) Criminal docket or case number (if you know): 4:13-cr-6-180

2. (a) Date of the judgment of conviction (if you know): November 15, 2013

(b) Date of sentencing: November 15, 2013

3. Length of sentence: 300 months and Life on Supervised Release

4. Nature of crime (all counts): Count (6) Distribution of a quantity of marijuana

Count (7) Using and carrying a firearm during and in relation to a drug trafficking crime and did possess said firearm in furtherance of said crime

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☒

## 9. If you did appeal, answer the following:

- (a) Name of court: N/A
- (b) Docket or case number (if you know): N/A
- (c) Result: N/A
- (d) Date of result (if you know): N/A
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised:

N/A  
(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised:

## 10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

## 11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: \_\_\_\_\_

N/A

(8) Date of result (if you know): \_\_\_\_\_

N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

N/A

(2) Docket of case number (if you know): \_\_\_\_\_

N/A

(3) Date of filing (if you know): \_\_\_\_\_

N/A

(4) Nature of the proceeding: \_\_\_\_\_

N/A

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: \_\_\_\_\_

N/A

(8) Date of result (if you know): \_\_\_\_\_

N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☒

(2) Second petition:

Yes ☐

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

## GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

That the Defendant/Petitioner was sentenced on November 15, 2013. What was instrumental in the Defendant/Petitioner sentencing was the categorization of the Defendant/Petitioner as a "career offender." The legislative intent of that categorization was to label repeat violent offenders. However, that label was attached to the Defendant based on his conviction for a criminal endeavor that took place between January 1-2, 1999. The Defendant was only seventeen (17) at the time when he committed the criminal endeavor between January 1-2 1999. The Defendant was convicted for one offense on June 10, 1999 in Halifax County, Superior Court, Halifax, North Carolina and was also convicted on September 7, 1999 in Wake County Superior Court, Raleigh, North Carolina. Both incidents occurred during a 24-hour time span. But more importantly, the two incidents were a part of one criminal endeavor. As such, the two offenses should not have been treated as two separate incidents, thereby causing the Defendant to be considered a repeat offender and ultimately, leading to his categorization as a "career offender." As a direct result of the label of "career offender," the Defendant/Petitioner received a considerably high sentence. That sentence is in conflict with the legislative intent of the "career offender" statute. But more importantly, the sentence imposed is in violation of both the Defendant's 5th amendment, as his right to both substantive and procedural due process was violated and his right to protection under the 8th amendment, as the sentence was excessive and cruel and unusual in light of

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

the unlawful label of "career offender."

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Counsel was ineffective for failure to raise this issue on appeal. This is a U.S. v. DAVIS (4th Cir) consolidation issue. Defense Counsel was ineffective for failing to object below

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

**GROUND TWO:** INEFFECTIVE ASSISTANCE OF COUNSEL FAILURE TO CHALLENGE THE CAREER OFFENDER

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Ineffective assistance of counsel failure to challenge his status as a career offender under Descamps V. United States, 133 S.Ct. 2281 (2013). That his common law robbery charge is violent crime under North Carolina General Structured Act . § 14-87. is not a violate crime.

SEE ... MEMORANDUM OF LAW

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Attorney was ineffective for failure challenge on direct appeal

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_ N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_ N/A

Date of the court's decision: \_\_\_\_\_ N/A

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_ N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective Assistance of Counsel Failure To File A Time Notice Of Appeal

**GROUND THREE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Ineffective Assistance of Counsel failure to file a timely notice of appeal under two cases from the Fourth Circuit. Peak V. United States, (4th. Cir. 2009) and Polindexter V. United States, No. 05-7635 (4th. Cir. 2007).

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N/A

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**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

N/A

- (2) If you did not raise this issue in your direct appeal, explain why:

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N/A

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☐

N/A

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 

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N/A

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Name and location of the court where the motion or petition was filed:

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N/A

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Docket or case number (if you know): 

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Date of the court's decision: 

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N/A

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Result (attach a copy of the court's opinion or order, if available):

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

N/A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

N/A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

N/A

- (6) If your answer to Question (c)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed:

Docket or case number (if you know): 

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N/A

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Date of the court's decision: 

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N/A

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Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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**GROUND FOUR:**

N/A

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

N/A

(2) If you answer to Question (c)(1) is "Yes," state:

N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

N/A



(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:  
Same
- (b) At the arraignment and plea:  
Same
- (c) At the trial:  
N/A
- (d) At sentencing:  
Woody Webb Jr.
- (e) On appeal:
- (f) In any post-conviction proceeding:
- (g) On appeal from any ruling against you in a post-conviction proceeding:
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: \_\_\_\_\_
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*
- Petitioner has filed a timely motion within the one year limitation period of Descamps and Davis.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

\_\_\_\_\_  
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 3-13-2015  
(month, date, year)

Executed (signed) on Iron Davis 3-13-2015 (date)

Iron Davis  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.